FILE COPY

FILED
NOV 29 1930
CHARLES ELMORE CROPLEY

No. 49

IN THE

Supreme Court of the United States

—o—

BAIN PEANUT COMPANY OF TEXAS, ET AL., Appellants

vs.

DAVE PINSON AND C. B. GUYGER Appellees.

—o—

Appeal from the Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas.

—o—

Appellee's Brief

—o—

MARK CALLAWAY,
Counsel for Appellants.

CALLAWAY & CALLAWAY
Of Counsel.

SUBJECT INDEX

	Page
Argument	3-16
Caption	1
Counter Proposition	2
Jurisdiction	2
Report of Opinions	1- 2
Statement of Case	2

AUTHORITIES

Bain Peanut Co. of Texas, 19 S. W. (2d) 203	2
Begley vs. Mississippi Valley Trust Co. 252 S. W. 84	7
Central Georgia Power Co. vs. Stubbs, 80 S. E. 636	6
Cincinnati Street Ry. Co. vs. Snell, 48 Lawyer's Edition 604	12
Cook vs. W. S. R. Mfg. Co. 115 Pacific, 318	5
Grayburg Oil Co. vs. Powell, 15 S. W. (2d) 542	10
Lewis vs. S. P. Ry. Co. 5th Pacific, 79	4
Morrimac Veneer Co. vs. McCalip, 92 Southern 817	9
Power Manufacturing Co. vs. Saunders 274 U. S. 490	15
Rafael vs. Peoples Bank, 187 Pacific 53	6

STATUTES

Subdivision 23, Article 1995, Revised Civil Statutes of Texas	4-11

No. 49

—o—

IN THE

Supreme Court of the United States

—o—

BAIN PEANUT COMPANY OF TEXAS, ET AL., Appellants

vs.

DAVE PINSON AND C. B. GUYGER Appellees.

—o—

Brief for Appellees

—o—

To The Honorable Supreme Court of the United States:

I.

REPORT OF OPINIONS DELIVERED BY THE COURTS BELOW.

The opinion of the Court of Civil Appeals for the 11th Judicial District of Texas on the last trial of this case is reported in 19th S. W. (2nd) 203. This, however, was the third appeal of this case. The first opinion, purely on a question of privilege, was delivered by the Eighth

Court of Civil Appeals and is found in 273 S. W. 655. On the next appeal the opinion by the Eleventh Court of Civil Appeals of Texas, is reported in 287 S. W. 87. On that appeal the opinions by the Supreme Court are found in 292 S. W. 204 and 294 S. W. 536.

II.

JURISDICTION

The Appellees have filed a motion to dismiss this case in this court for want of jurisdiction, and this brief is submitted without prejudice to said motion.

III.

STATEMENT OF THE CASE

The Appellant's statement of the case, as set out in its brief at pages two to six, we believe, is in the main correct, and is sufficient to apprise the Court of all facts necessary to a decision of the point in issue.

IV.

COUNTER PROPOSITION TO APPELLANT'S ASSIGNMENT OF ERROR

Section 23, Article 1995 of the Revised Civil

Statutes of Texas does not violate the equal protection clause of Section I of the Fourteenth Amendment to the United States constitution wherein such statute provides that "suits against private corporations, associations or joint stock companies may be brought in any county in which the cause of action or any part thereof arose," because this statutory provision does not deprive corporations of any fundamental right, safeguarded by the Fourteenth Amendment of the United States constitution, and the fact that the statute provides a different method of procedure, or a different forum in which suits against corporations, associations or joint stock companies may be tried from the forum in which suits against individuals may be tried, does not deprive either class of the equal protection of the law, or the protection of equal laws, since under this statute equal administration of justice may be obtained in either forum.

V.

ARGUMENT

Appellants contend that they have been denied equal protection of the law in the trial of

this case, because under the provisions of Subdiv. 23 of Art. 1995 of the Revised Statutes of the State of Texas the appellant was forced to stand trial in Comanche County, Texas, where the cause of action arose, instead of being permitted to remove the case on its plea of privilege to Tarrant County, where its principal place of business was located. The part of the subdivision of the Texas Statute complained of as being repugnant to Sec. I of the Fourteenth Amendment of the United States Constitution reads:

> "Suits against a private corporation, association or joint stock company, may be brought in any county in which the cause of action or any part thereof arose."

This character of procedural statute has been the subject of attack in many courts in many states of the United States, and so far as we have been able to ascertain, has stood the test of constitutionality wherever it has come up for decision.

In the case of Lewis vs. Southern Pacific R. Co. 5th Pacific, 79, decided in 1884 by the Su-

preme Court of the state of California, that court held that Section 16 of Article 12 of the Constitution of California was not in violation of the Fourteenth Amendment of the United States Constitution. That article of the California Constitution provided:

> "A corporation or association may be sued in the county where the contract is made, or is to be performed, or **where the obligation or liability arises or the breach occurs.**"

The court, in passing on the constitutionality of this proposition, in a short opinion says:

> "Nor are we able to see wherein the provision of the state constitution in question conflicts with the provision of the Fourteenth Amendment to the constitution of the United States."

Then again in Cook vs. W. S. R. Mfg. Co. 115 Pacific, 318, the Supreme Court of California again up-held the constitutionality of this procedural provision in 1911. In the Cook case the question of this provision of the California state constitution being repugnant to the Fourteenth Amendment to the United States Constitution

was directly under attack and the court held this provision did not violate or conflict with the 14th Amendment.

Also in the case of Rafael vs. People's Bank, 187 Pacific, 53, the same provision of the constitution was attacked again and the Supreme Court of California up-held its validity.

In 1913 the Supreme Court of Georgia in the case of Central Georgia Power Co. vs. Stubbs 80 S. E. 636 up-held a statute of Georgia in all respects similar to the one under attack in this case. This was a case in which the Power Company, built a huge dam which backed water on to the plaintff's land in an adjoining county up the river from the dam. The plaintiff sued the Power Company in the county of his residence under the Georgia statute, Acts of 1912 page 68, Sec. 4, which declares:

> "All railway and electric companies shall be sued in the county in which the cause of action originated by any one whose person or property has been injured by such railway or electric company, its officers or agents."

The Power Company attacked this provision of the Georgia statute as being in contravention of the Fourteenth Amendment of the United States constitution. The Supreme Court of Georgia directly held that this provision, in all essential respects like the one under attack here, was not in conflict with the U. S. constitution.

The Supreme Court of Missouri, in the case of Begley vs. Mississippi Valley Trust Co. 252 S. W. 84, says:

> "It is insisted by respondent's learned counsel: That section 1180 R. S. 1919, which provides that: 'Suits against corporations shall be commenced in the **county where the cause of action accrued** * * * or in any county where such corporations shall have or usually keep an office or agent for the transaction of their usual and customary business,' is unconstitutional because section 1177, R. S. 1919 requires actions against the resident of the state to be brought, 'either in the county within which the defendant resides, or in the county within which the plaintiff resides and the defendant may be found.' That therefore,

corporations, being persons within the meaning of the equal protection clause of the Fourteenth Amendment to the constitution of the United States, are thus denied the equal protection of the laws of this state relating to the venue of civil actions. In other words, that such laws make an arbitrary and unreasonable classification of individuals and corporations in fixing the venue of civil actions. * * *

"The provision that suits must be brought against the corporation in the county where the **cause of action accrued is not a discrimination in any manner against the corporation** or in favor of the individual, because the cause of action may accrue, as well in the county where the corporation is located, as in the county where the individual bringing the suit resides, or it may accrue in some county where the corporation is not located, has no agent, and where the plaintiff does not reside. The classification, which the courts hold is vicious and violates the Fourteenth Amendment, is only unreasonable and arbitrary classification, and does not apply to reasonable and proper classification. No authorities need be cited in support of this proposition. It is elementary. The statute com-

plained of has been in existence as it now stands since the revision of 1855, and as far as we have been able to ascertain the bar of this state has never before in this court attacked it as being unreasonable and arbitrary classification, and violate of fundamental laws, except as applied to libel cases. * * *"

It will be seen from this quotation that a statute, in all essentials exactly the same as the one under attack here has been up held by the Supreme Court of Missouri.

In the case of Morrimac Veneer Co. vs. McCalip 92, Southern 817, the Supreme Court of Mississippi held constitutional a statute which reads:

"Chap. 166 laws of 1908. Civil actions of which the circuit court has original jurisdiction shall be commenced in the county in which the defendant or any of them may be found, **and if the defendant is a domestic corporation, in the county in which the corporation is domiciled or in the county * * * where the cause of action may occur or accrue."**

In that case the constitutionality of the Missis-

sippi statute was under direct attack, and the statute was held not to violate the Fourteenth Amendment.

In the recent case of Grayburg Oil Co. vs. Powell, 15 S. W. (2nd) 542, in an opinion by the commission of appeals, adopted and approved by the Supreme Court of the State of Texas, that court has definitely decided in favor of the constitutionality of the statute which the appellant claims is unconstitutional in this case.

In that case the court discusses the decisions of the Third Court of Civil Appeals in the Dublin Mill & Elevator case and the Houston Light and Power case, cited in that opinion, in which opinions the court of civil appeals held subdivision 23, Art. 1995 R. C. S. unconstitutional. Our court also discusses the case of Power Mfg. Co. vs. Saunders 274 U. S. 490, on which those opinions were based, and in that connection says:

> "In our opinion the decision of the Supreme Court of the United States in the Power Manufacturing Company case, supra., is not authority for holding any part

of said venue statute unconstitutional. In the Power Manufacturing Company case the court had under consideration a state venue statute of Arkansas. * * * The vice in the Arkansas statute was not that it provided a different venue for corporations and private individuals, but that it made an arbitrary and unreasonable classification, in that it placed domestic corporations in one class and foreign corporations doing business in the state by permission of the state, in another and less advantageous class as to venue. * * *

"Our statute, Subdiv. 23 of Article 1995 R. C. S., makes no such classification or discrimination as is condemned in the Power Manufacturing Company case; but it covers by its terms all private corporations, associations or joint stock companies, be they foreign or domestic. Under the holdings of the appellate courts of this state the same laws of venue cover and apply to all domestic and all foreign concerns embraced without discrimination of any character."

In the above quotations from many of the state courts of last resort we have tried to call the court's attention to decisions on statutes in

substance, and in many cases in exact words, like the statute complained of by the appellants in this case. In every case we have been able to find where similar statutes have been construed in any state of the union they have been up held as not in violation of the Fourteenth Amendment of the United States constitution.

This court, in our opinion has ruled adversely to appellant's contention in this case in the case of Cincinnati Street Railway Co. vs. Snell, 48 Lawyer's Edition 604. This was a case in which Snell sued the defendant railway company in Hamilton County, Ohio, and sought to take advantage of an Ohio statute to remove the case from Hamilton County to an adjoining county. The Ohio statute provided that where a corporation having some fifty stock holders was a party to a suit, the opposite party might, by securing the affidavit of five credible persons that he could not get a fair trial in the county, remove the case to an adjoining county.

The railway company attacked the constitutionality of that statute, claiming that it denied corporations the equal protection of the laws.

Chief Justice White, in the opinion of the Court holding that such statute did not deprive corporations of equal protection of the laws says this:

> "But it is fundamental rights, which the Fourteenth Amendment safeguards, and not the mere forum which a state may see proper to designate for the enforcement and protection of such rights. * * * It is not, under any view, the mere tribunal into which a person is authorized to proceed by a state which determines whether the equal protection of the law has been afforded, but whether in the tribunals which the state has provided equal laws prevail."

That opinion very ably discusses the exact legal question, which we believe should determine this case against appellant's contention.

We believe that our venue statute affecting actions against corporations is based on a proper classification of and is supported by a pertinent distinction between corporations and individuals. It is evident that the venue laws and those regarding process and service on individuals and corporations cannot be made the same. Cor-

porations are strictly creations of statute law and must be made the subject of different regulations from those governing individuals. We believe that should this venue statute be held unconstitutional, the majoriy of our other venue statutes regarding corporations will be stricken down under constitutional objections similar to the one presented here. Litigation against railroads in this state, which now may be filed in any county through which the railroad passes will be drawn to one or two of the principal cities where the main offices of the companies are located. Litigation against insurance and bonding companies, which now may be brought in the counties where the loss occurs or the policy holders reside, will be drawn tc one or two principal cities where most of such companies have their main offices. Should the state be denied the right to make a distinction between individuals and corporaions as to the service of process and the forum in which suits may be tried, litigation will be congested in a few of the great cities of the state in such manner as to practically render it impossible for individual

litigants to ever secure judicial determination of their rights.

We will not undertake in this brief to analyze the cases cited by the appellants in their brief. They rely principally upon the case of the Power Mfg. Co. vs. Saunders, 274 U. S. 490 in which this court held a venue statute of the state of Arkansas unconstitutional. We believe, however, an examination of that case will show, as our Supreme Court found in the Grayburg Oil Company case, that it is no authority for holding the Texas venue statute here attacked, unconstitutional. The Arkansas statute obviously made an unjust and unreasonable discrimination as between domestic and foreign corporations, seeking the adjudication of cases in the courts of Arkansas. We do not believe that this court undertook to hold in that case, as contended by the appellants, that venue statutes should be made in all essentials the same as to suits against individuals and corporations. No other case cited by the appellants it seems to us furnishes any support or authority for their contention.

We respectfully request that this case be affirmed.

Mark Galloway,
Counsel for Appellees.